
A PUBLICATION OF THE NEW JERSEY DIVISION OF PENSIONS AND BENEFITS

Divorce and Your Deferred Compensation Account

New Jersey State Employees Deferred Compensation Plan

What happens to my account in the case of a divorce?

ENCUMBRANCES ON YOUR DEFERRED COMPENSATION ACCOUNT

The New Jersey State Employees Deferred Compensation Plan is an eligible state and local government deferred compensation plan defined under Internal Revenue Code Section 457(b). As such, it is not regulated by federal ERISA legislation that authorizes the payment of retirement benefits in accordance with the requirements of qualified domestic relations orders (QDRO). These are orders issued by a court, generally in connection with the granting of a dissolution of a marriage.

The Division of Pensions and Benefits recognizes that these assets may constitute a significant part of marital assets. Court decisions and opinions rendered by the Attorney General have resulted in the pension systems implementing domestic relations orders. Therefore, although your deferred compensation plan account is normally exempt from any liens, **the Division will honor acceptable qualified domestic relations orders** and make every effort to implement them.

DISTRIBUTION FROM AN ALTERNATE PAYEE'S ACCOUNT

A separate account will be established for a divorced spouse, or alternate payee, as soon after the order is received as is administratively possible. Assets will be transferred from the member's account to the alternate payee's account at that time. The alternate payee has the right to direct investment of those assets once they are segregated from the member's account. Distribution may commence for the alternate payee at any time based on a submitted *Request for Distribution* form.

To be implemented by the Division of Pensions and Benefits, the matrimonial order must designate the amount to be set aside for the alternate payee at the time assets are segregated. This amount may be designated as a specific dollar amount or a specific percentage of the member's account, but not as a

monthly payment from the original member's account. The amount set aside for the alternate payee is sent directly to the alternate payee unless the order specifies another payee, such as a probation department.

Before a matrimonial order is issued, the text of the order should be sent to the Division of Pensions and Benefits for review and comment.

INCOME TAX REPORTING

As with qualified retirement plans, recently enacted federal tax law (effective January 1, 2002) permits the assignment of income to an alternate payee receiving benefits pursuant to a domestic relations order from an IRC Section 457(b) deferred compensation plan. Therefore, any distributions to an alternate payee are reported as income to that alternate payee for the year that the distribution is made. Also, any income tax withheld from the distribution to the alternate payee is reported as withholding for the benefit of the alternate payee and is used to offset any tax liability due by the alternate payee. The alternate payee is given the opportunity to submit a *Withholding Allowance Certificate - Form W-4P*, for the purpose of calculating federal income tax withholding from the benefit payment. Benefit and income tax withholding amounts are reported to both the member and the alternate payee on *Form 1099R*.

BENEFITS PAID TO BENEFICIARIES AFTER MEMBER'S DATE OF DEATH

Upon the death of the member, any assets remaining in the alternate payee's account remain in the alternate payee's control but take the characteristics of a payment to a beneficiary.

Any distributions to an alternate payee, or an alternate payee's beneficiary are reported as pension payments to the alternate payee or surviving beneficiary.

TAXABILITY

The New Jersey State Employees Deferred Compensation Plan is an eligible state deferred compensation plan under section 457(b) of the

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Internal Revenue Code. The distributions do not qualify for special 5-year or 10-year averaging. Distributions also will not qualify as "compensation" for an individual to be eligible to make contributions to an IRA.

Distributions from the Plan are defined as pension payments and are subject to federal income tax unless rolled over to a qualified plan. Tax withholding will be determined by the eligibility of your funds for rollover to other plans. If directly rolled over to another pension plan, nothing will be withheld. If eligible for a rollover and paid directly to you, 20 percent will be withheld. If not eligible for a rollover, taxes will be withheld based on the information that you file with us on a *Withholding Allowance Certificate (Form W-4P)*. You may revise this information at any time by filing a new form. At the end of every year in which you receive a distribution, you will be issued a *Form 1099R* indicating your distribution and any tax withheld.

If you were a New Jersey taxpayer while participating in the Plan, contributions to the Plan were included in your New Jersey gross income when they were made. Therefore, only the distributions that you receive in excess of the total amount of your contributions will be included in your New Jersey taxable income.

Distributions received from the Plan by a New Jersey non-resident are not subject to New Jersey gross income tax and should not be reported on *Form NJ-1040NR*.

This taxability information has been developed from information obtained from various federal and state taxpayer publications. These rules may be changed at any time and the Plan makes no guarantees as to the validity of these statements. Therefore, you may want to consult a professional tax advisor before you take a distribution from the Plan. Additional information concerning the taxability of your distribution from this eligible IRC § 457 plan should be directed to the Internal Revenue Service 1-800-829-1040, the New Jersey Taxpayer Hotline (609)

292-6400 or your home state's revenue collection authority.

ROLLOVER

Upon separation from employment, distributions may be eligible for direct rollover to a qualified 401(k), 403(b), IRA or 457(b) program in which you are actively participating. You can choose a direct rollover of all or any portion of your payment that is eligible for rollover. In a direct rollover, the distribution is paid directly from the Plan to an IRA or eligible employer plan that accepts the rollover. For additional rollover information see Fact Sheet #59, *The Taxability and Mandatory Withholding of Income Tax from Your Deferred Compensation Plan Distribution*.

BENEFICIARY DESIGNATION

The Division of Pensions and Benefits cannot implement any "irrevocable designation of death benefits or selection of retirement option." Such designation or selection remains the prerogative of the member.

A member involved in a divorce proceeding should review his or her beneficiary designation at the time divorce papers are filed and again after the final decree has been issued. Unless the member changes beneficiary designations, the member's last beneficiary designation would be the one honored. If you are unsure of your beneficiary designation, contact the Division of Pensions and Benefits, NJ State Employees Deferred Compensation Plan at (609) 292-3605 to have a new beneficiary designation form sent to you. The Division of Pensions and Benefits cannot release the identity of a member's beneficiary without the member's written approval.

The alternate payee may make beneficiary designations for the segregated assets. However, payments to those beneficiaries only commence following the alternate payee's date of death **and** the member's separation from service with the employer.

This fact sheet has been produced and distributed by:

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Although every attempt at accuracy is made, it cannot be guaranteed.
